

July 2002

General Rules for Trial Counsel

Procedures in Cases That are Set for Trial

Counsel with either jury or bench cases set for trial are requested to comply with the following procedures:

- (1) All trial settings are firm, depending upon the availability of the Court. It is not safe to assume that the cases set ahead of yours will proceed to trial. They may settle or have to be continued on the morning of trial because of some unexpected development. The Deputy Court Clerk will be happy to answer your questions as to how the call appears, but reliance upon such information will not justify a continuance.
- (2) If the case is settled, or if in a criminal case the defendant decides to change his or her plea, please notify the Deputy Court Clerk without delay so that another case can be scheduled in your place. Please do not wait until the day of trial to inform the Court the case has previously been settled or that the defendant has previously decided to plead guilty.
- (3) All exhibits should be marked prior to the session of the trial at which they are to be introduced. No trial time will be used for this purpose.

Additional Procedures in Jury Trials

- (1) Sidebar conferences will be kept to a minimum. This Court agrees with Standard 5.9 of the Standards suggested by the American Bar Association Advisory Committee on the Judge's Function (1972):

The trial judge should be alert to the distracting effect on the jury during the taking of evidence of frequent bench conferences between

counsel and the judge out of the hearing of the jury, and should postpone the requested conference to the next recess except when an immediate conference appears necessary to avoid prejudice.

- (2) Any anticipated evidentiary problems should be brought to the Court's attention in advance—either before the morning session or at the end of the day—in order to avoid the need for side-bar conferences.

Exhibits

Counsel are responsible for marking their own exhibits. Counsel must give a copy of each exhibit to the Court before using it at trial. In civil trials, counsel must exchange copies of their trial exhibits before trial begins (see applicable scheduling orders and/or Judge Swain's Individual Practices Rules). Counsel shall bring on the day of trial additional pre-marked copies for use by witnesses, the courtroom deputy, opposing parties and (if applicable) the jury.

The Court's copies of the pre-marked exhibits should be assembled sequentially in a notebook and tabbed, or if a party prefers, each exhibit may be placed in a separate manila folder with number or letter visible on the lip, and the folder placed in a suitable container or box for ready reference. Each counsel must provide to the Court three copies of his or her final exhibit list. Counsel shall also provide copies to the Court of any depositions which are intended to be offered, in whole or part, into evidence. Depositions are not generally to be offered in their entirety. Except in the rare instance where all the testimony is relevant, copy the relevant pages only, staple the extracts from each deposition, and offer each as an exhibit.

Except where otherwise directed by the Court, each side of the case keeps track of its own exhibits. While an exhibit is being used, it may be left in the possession of the Deputy Court Clerk. Counsel are responsible for ensuring that exhibits sent in to the jury are genuine and actually have been received in evidence.

Conduct During Trial

Your compliance with the following requests will be greatly appreciated:

- (1) Please be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have a colleague handle them for you.
- (2) Court time may not be used for marking exhibits. This must be done in advance of the court session.

- (3) Please stand whenever you address the Court. This includes the making of objections. (Counsel with physical disabilities will be excused from this requirement as necessary.)
- (4) Please stand a respectful distance from the jury at all times, addressing the jury and witnesses from the podium only, unless the Court gives you permission to approach the witness or to publish an exhibit to the jury.
- (5) In your opening statement to the jury, do not argue the case and do not discuss the law. Please confine yourself to a concise summary of the important facts.
- (6) Please stand at the podium when you question witnesses. (Counsel with physical disabilities will be excused from this requirement as necessary.) Do not pace about the courtroom when questioning witnesses. This distracts the jury and wastes time.
- (7) If you intend to question a witness about a group of documents, avoid delay by having all the documents with you when you start the examination.
- (8) Please commence your cross-examination without preliminaries.
- (9) When you object in the presence of the jury, make your objection short and to the point. Unless specifically directed by the Court to do so, do not argue the objection in the presence of the jury. Do not argue with the ruling of the Court in the presence of the jury. Do not make motions (e.g., a motion for a mistrial) in the presence of the jury. Such matters may be raised at the next recess.
- (10) Please do not face or otherwise appear to address yourself to jurors when questioning a witness.
- (11) The jury should hear the instructions on the law of the case from the Court, an impartial source. In your final argument, you may tell the jury what you believe the substance of the Court's instruction on a particular subject will be, but do not read or quote any instruction.
- (12) Please address all remarks to the Court, not to opposing counsel.
- (13) Avoid disparaging or disrespectful personal remarks or acrimony toward opposing counsel and remain wholly detached from all ill feeling between the litigants or witnesses.

- (14) Please refer to all persons, including witnesses, other counsel, and parties by their surnames and not by their first or given names.
- (15) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross-examination.
- (16) In examining a witness, counsel should not repeat or echo the answer given by the witness.
- (17) Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.